

MONTANA PUBLIC DEFENDER COMMISSION

Minutes

Office of the State Public Defender, Central Office

44 W. Park

Butte, Montana

October 11, 2007

(Approved at the November 9, 2007 Commission Meeting)

Call to Order

The Montana Public Defender Commission meeting was called to order by Chairman Jim Taylor at 12:30 p.m.

Commissioners Present

Dan Donovan, Great Falls; Caroline Fleming, Miles City; Tara Veazey, Helena; Wendy Holton, Helena; and James Park Taylor, Missoula. Vic Miller, Harlem, attended by teleconference.

Commissioners Absent

Jennifer Hensley, Butte; Stephen Nardi, Kalispell; Mike Sherwood, Missoula. Commissioners Betty Bichsel, Edgar, and Ivan Small, Poplar, have resigned.

Commission members expressed their concern for Commissioner Nardi, absent due to an accident.

Interested Persons

Scott Crichton, American Civil Liberties Union of Montana

Approval of Minutes from the September 7, 2007 Meeting

Commissioner Donovan moved to adopt the minutes as submitted. Commissioner Veazey seconded the motion. The motion carried.

Reports

Chief Public Defender Report

- *Public Defender Program Update*

Chief Public Defender Randi Hood reported that a long-standing vacancy in Helena has been filled, leaving just one remaining opening in Billings (exhibit 1). Interviews are scheduled for next week. Region 4 (Helena) will begin doing some cross-regional work in White Sulphur Springs. The Missoula, Kalispell and Havre offices are using student workers to assist support staff, and that's working well.

Chief Hood, Contract Manager Larry Murphy and Administrative Director Harry Freebourn have been traveling the state to meet with contract attorneys, listen to their concerns and provide the opportunity for open discussion. The meetings in Kalispell, Missoula, Great Falls and Conrad have been cordial and productive. In response to a suggestion for a dispute resolution process for claims that have been adjusted, Mr. Murphy will develop a procedure that may include enlisting contractors to do reviews. The Lexis proposal was well-received, and Chief Hood would like to implement

it as soon as possible. She doesn't anticipate any trouble getting a sufficient number of contractors to participate (OPD must purchase licenses in increments of 50). Additional meetings are scheduled in Billings and Lewistown before the end of October.

Performance appraisals are underway in Region 1 for both FTE and contract attorneys. The evaluation includes courtroom observation of the attorney's preparation, advocacy and decorum. For FTE public defenders, the managing attorney and regional deputy will also evaluate how the employee works within the office.

Chief Hood and Mr. Freebourn met with a workgroup of the Legislative Finance Committee on October 9. Two program goals have been identified and outcome measures are being discussed.

- *Report to Governor/Legislature/Supreme Court*

The final case data for fiscal year 2007 to be included in the report (exhibit 2) was distributed. Numerical data regarding case counts and workload by attorney is not available for fiscal year 2007 because a temporary case management system has been in place since July 2006. Instead, Chief Hood prepared a narrative (exhibit 3) to include in the report, which will be presented to the Law and Justice Interim Committee at their November 9 meeting. Improvements to the case management system should be fully deployed by early November and will enable reporting case information by attorney. The Commission requested that a supplement with current caseload data be prepared and provided to the Law and Justice Committee before their January meeting and that the narrative reflect that additional information will be forthcoming. The Commission also agreed to a language change in the narrative suggested by Commissioner Veazey.

- *Union Issues*

The new attorney contract has been ratified. The Labor Management Committee (LMC) will meet again in late October. The LMC is addressing various issues including continuing education, professional publications, cell phones, volunteer activities, parking and the role and use of support staff. The pay committee also continues to meet to establish a career ladder with associated pay levels for attorneys. This will be important for budgeting for the next biennium. Decision packages for the next biennium are due to the governor's office in May 2008, and the Commission will be asked to review budget requests beginning in early 2008.

Notice of unit determination proceedings have been filed for administrative support staff and for investigators. The investigators have not voted yet, but the results of the support staff vote should be available next week.

- *Financial Update*

Mr. Freebourn noted that the Commission's September budget report includes corrected information from August (exhibit 4). He then reviewed the financial statement through September 30 (exhibit 5). The 3% salary increase is effective October 1.

To assist in budgeting and in response to problems with timely billing, the new Memorandums of Understanding have a provision that "claims submitted more than 45 days from the last day of the month of service will be denied." This provision will be

implemented beginning with September billing, with claims due to OPD no later than November 14, 2007. Every contract attorney and mental health professional that has signed an MOU or received a payment from OPD will be sent a certified letter informing them of the change.

- *IT Update (exhibit 6)*

Heidi Henry, Case Information Management Project (CIMP) Operations Lead, updated the Commission on the CIMP effort. She said that OPD support staff statewide have been doing amazing work to prepare for the JustWare conversion, in addition to their regular work. The cutover schedule from the old JustWare system to the updated system is very aggressive—the first region went live this week and the final locations will be live by early November.

The video conferencing equipment has been ordered and will be installed in the Central Office by the end of 2007. IT staff are still working a technology solution for the brief bank. They expect to implement in early 2008.

- *Training Coordinator Update (exhibit 7)*

Chief Hood said that OPD's annual meeting is going well, with good participation and camaraderie. A leadership summit for the chief appellate defender, regional deputies, and managing attorneys is scheduled for February 8, 2008, to be presented by a trainer from the Kentucky public defender system.

- *Mental Health Evaluation Protocol Update*

Chief Hood congratulated Mental Health Consultant Dr. Laura Wendlandt for passing her Montana boards.

Dr. Wendlandt asked the Commission to extend the interim fee schedule for mental health services (exhibit 8) until the next Commission meeting, currently scheduled for November 9. She would like to solicit input from providers before submitting a final proposal for an addendum to the Memorandum of Understanding for the Commission's approval at the November meeting. The proposal will address six issues:

1. Testimony—a rate of pay guideline is needed because there is currently too much variation in what providers are billing
2. MSOTA/Sex Offender evaluations—change to one rate regardless of professional qualifications
3. Chemical Dependency evaluations—same as above. These are specialized evaluations following a single protocol and as such should have a single rate.
4. No-show Policy/Rate
5. Computer generated fees—change from \$30 to actual
6. Travel—should be consistent with state policy as for other contractors

- *Contract Officer Update*

Mr. Murphy will have a draft procedure regarding payment disputes for the next meeting. The letter notifying contract attorneys and mental health providers of the imminent implementation of the "45 day rule" (claims submitted more than 45 days from the last day of the month of service will be denied) will be sent via certified mail before the end of the month.

Appellate Defender Program Report

Chief Appellate Defender Jim Wheelis reported on the number of current appellate cases (exhibit 9). He has identified a good group of contract attorneys that work quickly. He thanked FTE attorneys Greg Hood and Cathy Sohlberg for their work on briefs. The office is very busy but doing okay with the help of FTEs in the regions. Chief Wheelis thinks that ultimately they will need two additional FTE in the appellate office. Chief Hood said that this is a discussion going on with the regional deputies as well, in preparation for the next budget cycle.

Chief Wheelis said that connecting probation conditions to the crime is a continuing struggle.

Pro Bono Program

Chairman Taylor is reviewing the possibility of instituting a pro bono program whereby some OPD cases would be handled by private attorneys without compensation. He has requested rates for malpractice coverage, which is required of any attorney doing pro bono work. If providing the coverage to attorneys doing OPD pro bono work seems feasible based on preliminary information, the state's contracting procedure would have to be followed.

Public Comment—General

Eric Moore, assistant public defender in the Billings office, took exception to Chief Hood's September report to the Commission regarding the situation in Billings. He thinks caseloads in Billings are too high to properly represent clients, and that more attorneys and support staff are needed. Commissioner Veazey is still concerned about the disproportionate expenditures compared to the percentage of poverty population for Region 2. She said that while she understands that no office is "over-resourced" she thinks that FTE should be reallocated where most needed. Chief Hood has been reviewing staffing needs throughout the state and will be making recommendations.

Ed Sheehy, regional deputy public defender for Region 2 said that it is unfair to compare regions 2 and 9. He has two full time offices in Missoula and Hamilton, plus municipal courts in Darby and Stevensville. Just comparing numbers and costs doesn't take this into account.

Todd Chatman, assistant public defender in Billings, said they are doing more with less and their managers are stretched to the limit. He asked the Commission to rededicate itself to the mission—adequate representation should be more important than saving money. Mr. Sheehy said that it was unfortunate that the legislature didn't give OPD additional funding, and that all of the regions are facing the same problems in terms of being stretched too thin. Chairman Taylor understands the need for additional resources; the Commission fought hard for more funding in the last session and kept an additional \$4 million from being cut from OPD's budget. Commissioner Veazey said that one way they are fighting for the vision is by demanding the numbers (case counts/costs) to justify increasing resources. Mr. Freebourn said that a key component to raising legislative awareness is both FTE and contract public defenders talking to their individual legislators.

Jim Siegman, assistant public defender in Billings, seconded the remarks of Mr. Moore and Mr. Chatman. He noted that their office deals with special considerations due to the politics in Yellowstone County. The county attorneys won't deal on certain types of cases, so they go to trial when they might not in other regions.

Douglas Day, regional deputy public defender in Region 7, said that one way to deal with overwork is to increase efficiency and share information. The annual meetings are especially helpful for him as “one guy in one office.” The brief bank will be a big help when it is up and running, and a list serve could be useful as well.

Koan Mercer, assistant public defender in Missoula, is interested in attending more Commission meetings, especially by videoconference.

Brian Smith, managing attorney in Missoula, objected to language in the Release of Information policy relating to the release of client information. Mr. Freebourn clarified that this is not a Commission policy, but one that was adopted by management after review by the Labor Management Committee. He invited Mr. Smith to submit his concerns to Chief Hood for possible revision of the policy.

Public Comment—Contract Attorney

No public comment was offered at this time.

Old Business/New Business (*Action Items)

The Commission would like to honor departing Commissioner Betty Bichsel, and asked Mr. Freebourn follow up on producing a token of appreciation.

Commissioner Veazey proposed that the Commission move to a new six meeting per year schedule, scheduling quarterly meetings a year in advance with two ad-hoc meetings per year. Chairman Taylor suggested setting aside a half day for committee meetings and creating an Executive Committee to handle items requiring action between regular meetings. Commission members were generally supportive of a six meeting schedule. Chief Hood said that it is important to schedule meetings in conjunction with the annual conference and with the Law and Justice Interim Committee, but that six meetings seems adequate. She also suggested spreading the meetings out geographically. Chairman Taylor will present a proposed schedule for a vote at the next meeting.

Chairman Taylor made a motion to offer Lexis to contract attorneys at the state rate (about \$20 per month) if at least 50 contractors choose to participate. Commissioner Fleming seconded. The motion carried.

Commissioner Fleming moved to approve the Report to the Governor, Legislature and Supreme Court, with the addition of a sentence in the narrative reflecting that a supplement will be forthcoming in January. Commissioner Veazey seconded. The motion carried.

Future Meetings

The next meeting will be November 9 in Butte, followed by a roundtable with the Law and Justice Interim Committee.

Adjourn

The meeting adjourned at 3:00 p.m. Following adjournment, the Commission met informally with the regional deputy public defenders.

Exhibits 1 – 9 have been posted with these minutes to the Office of the State Public Defender website at:
<http://www.publicdefender.mt.gov/>